

IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

Supreme Court, U. S.
FILED

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MICHAEL ROBAK, JR., CLERK

No. 79-227

MAX SCHULMAN, SALLY SCHULMAN, his wife, and
WAMAC, INC., a corporation of the State of New
Jersey,

Petitioners,

vs.

PATERSON REDEVELOPMENT AGENCY,
Respondent.

**On Petition for Writ of Certiorari to the Supreme Court,
State of New Jersey**

BRIEF FOR RESPONDENT IN OPPOSITION

HENRY RAMER
Corporation Counsel
Law Department—City Hall
Market Street
Paterson, New Jersey 07505
Attorney for Respondent

HARRY ZAX
JOSEPH C. PETRIELLO
On the Brief

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BRIEF FOR RESPONDENT IN OPPOSITION**Counter-Statement of the Case**

The petitioner seeks a review of a decision of the Supreme Court of New Jersey dated January 4, 1979, and entered on the same date, contending that federal

issues of substance are involved, not heretofore decided by this Court. On the contrary, Federal issues of substance are not involved, as will be more particularly discussed in the arguments following, in which respondent replies to the points raised by the petitioner.

The court's specific attention is called to the fact that no federal money is involved in this case. All relocation expenses were paid by a bond issue of the municipality. The building on River Street, Paterson, New Jersey and the business being operated therein were not located in an urban renewal area. The Supreme Court of New Jersey decided that the issues are governed by the agreement between the parties. Although the petitioners should have exhausted the administrative remedies available to them, including the review procedure, they did not do so. The Supreme Court ruled in favor of the respondent on the issues presented herein, and should be upheld.

Counter-Statement as to why there is no federal issue of substance involved requiring federal intervention.

As to Parts I and II of the Petitioner's brief, in view of the fact that the Court was interpreting a specific agreement between the parties, a degree of flexibility in the relocation guidelines should remain to suit this particular case. The factual issues in this case were considered by the Court, not only in the appeal, but also in the Petitioner's petition for rehearing before the Supreme Court of New Jersey (Appendix B-15A and Appendix C-20A). The petition was denied. There is no federal issue of substance presented herein which requires federal intervention.

Likewise, as to Parts III and IV, the issues of interest and legal fees were presented in the petition for rehear-

ing before the Supreme Court of New Jersey (Appendix B-15A and Appendix C-20A) and in the attorney's motion for counsel fees before the Supreme Court (Appendix D-21A). The court affirmed this non-compensability. The arguments presented related primarily to the furtherance of a legal action in the State courts, and do not present federal issues of substance, or important and special reasons which would require the United States Supreme Court to review the instant matter by granting a Writ of Certiorari.

The above matters are detailed in the brief following.

Reasons for Denying the Petition for Writ of Certiorari

I.

The New Jersey Supreme Court did not err in its interpretation of the agreement with respect to the application of the federal guidelines to Item 7.

In the appeal to the Supreme Court of New Jersey, pursuant to New Jersey Rule 2:12-6, the record consisted of the briefs, appendices and transcripts filed with the Appellate Division. Therefore, in arriving at the opinion below, the New Jersey Supreme Court had the benefit of the entire record of the proceedings in the trial court, and the opinion of the Appellate division. As to what claims should be compensable, the New Jersey Supreme Court stated: "... we find that the issues are governed by the agreement between the parties and rely solely on our interpretation of the agreement" (Appendix A-9a) (emphasis added).

It was proper for the New Jersey Supreme Court to deny the bill for printing, when the sole proof submitted at trial was a written estimate, without any proof that the amount was necessary and reasonable. The remedy available to the petitioner had to arise out of an actual reasonable expense in moving the business, in order to be compensable. The petitioner seeks to charge the respondent not only for the cost of printing, but for all the material to be printed upon. No proof was ever submitted for such expenditure. The petitioner had the opportunity for an administrative review of this matter, but neglected and/or refused to seek such review. The New Jersey Supreme Court also held that the exhaustion of administrative remedies would have been the proper procedure.

The petitioner implies that a reasonable businessman would have replaced the stationery and display cards, rather than overprinting the address. The New Jersey Supreme Court, upon its review of the entire record, was satisfied that the overprinting was feasible and, therefore, the printing of new stationery and displays was not a reasonable relocation expense (Appendix A-11A). This finding should not be disturbed.

II.

The New Jersey Supreme Court did not err in not applying federal guidelines in denying compensation for roof repairs and repairs of loading dock and grade at the new location.

The petitioner was in the business of selling sporting goods and its inventory was warehoused at the River Street site. This operation was not unique. The petitioner seeks recovery of \$23,100 for the roof repairs, and

\$27,000 for the repair of the loading dock and grade at the new location.

Petitioner's reference to Appendix G-26 A must be read in *para materia* with other sections of the regulations. The business concern must submit the claim, together with plans and obtain prior approval before any such physical changes are compensable. Under State and Federal regulations, the procedure to be followed is almost identical.

"In any case where it appears that physical changes must be made to a building, the business concern shall discuss its plan with the local agency before the move so that an agency determination of acceptability can be made. If the local agency finds that compensation or the changes may be eligible, DCA concurrence shall be obtained prior to the move." (N.J.A.C. 5:11-10.9(b)). In the federal regulations, the wording is as follows: "In any case where it appears that physical changes must be made to a building, the business concern shall discuss its plan with the local agency before the move so that an agency determination of acceptability can be made. If the local agency finds that compensation or the changes may be eligible, HUD concurrence shall be obtained prior to the move . . ." (Federal Relocation Handbook 1371.1, Chg. 1, Chapter 6, Section 5, Paragraph 81 (b)). No such concurrence was ever obtained, nor was any such plan ever discussed. As a matter of fact, it was not until the date of the trial that the respondent was aware of any claim to be filed for such items.

In addition, a policy underlying the Relocation Assistance Act is to avoid the award of double recoveries, as no party should be compensated twice for the same property. Here, petitioner has accepted compensation for the land and buildings at River Street. The regu-

lations expressly prohibit physical changes at the new location which would increase the value of the building for general purpose uses. N.J.A.C. 5:11-10.9 (a) (3) (See Appendix M) and Federal Relocation Handbook 1371.1 Chg. 1 Chapter 6, Section 5, Paragraph 81 (a)(3) (Appendix G-26a). Clearly, such structural changes were subsumed in the acquisition of the River Street property.

The petitioner's attorney raised the question of compensability of the items above in his own appeal before the Appellate Division of the Superior Court of the State of New Jersey. He agreed that the State Administrative Code contains almost the same language as the Federal regulations. The Appellate Court affirmed the denial of compensability for these items. The issue was raised by the petitioner before the New Jersey Supreme Court in its petition for rehearing. The Supreme Court properly denied compensation.

III.

The New Jersey Supreme Court did not err in not granting counsel fees in the judgment.

The respondent contends that the petitioner is not entitled to counsel fees under any applicable provisions of law. The petitioner seeks to recover counsel fees under Federal Regulation 6-14:h enacted February 20, 1975, and effective March 31, 1975 (Appendix H-27a). The displacement took place before the effective date of the Federal Regulation.

The petitioner concedes that the regulations were not effective until March 31, 1975 (Petition-14). HUD, Community Planning and Development Transmittal 1371.1 Rev. dated 2/20/75 provides in part as follows:

"The policies and requirements set forth in the revised Handbook apply to displacement on or after March 31, 1975. Claims not yet submitted or approved that pertain to displacement prior to that date are to be processed in accordance with the regulations of May 13, 1971 as amended August 17, 1972, . . ." In any case, the claim for legal fees would not have been within the purview of this regulation.

The petitioner cites *Ledesma v. Urban Renewal Agency of City of Edinburg*, 432 F.Supp. 564 (D.C. Texas 1977). In that case the plaintiff and defendant agreed to the payment of legal fees and the proceedings were initiated by the tenant after full administrative proceedings had been exhausted. In the instant case, the respondent denied its liability for such fees; there was no exhaustion of administrative remedies; and the action was considered by the court as part of the original condemnation proceeding and not because of an affirmative legal action taken by petitioner to recover relocation expenses.

The petitioner indicated that it would be unjust for it to pay legal fees in addition to the moving charges presented by the movers (Petition-14). This represented a judgment on the part of the petitioner who could have assigned the mover's claim to the mover pursuant to the regulations. This petitioner elected to do otherwise.

Under Federal and State law, there is no statutory authority for the payment of legal fees in the case *sub judice*. The case law affirms this denial of fees in cases similar to the case at bar. Cf. *United States v. 4.18 Acres of Land, Etc.*, 542 F.2d 786 (9th Cir. 1976); *United States v. Worley*, 281 U.S. 339, 344, 50 S.Ct. 291, 74 L.Ed. 887 (1930); *United States v. 5,553.80 Acres of Land, More or Less, Etc.*, 451 F.Supp. 200 (W.D. La. 1978); *State of New Jersey v. Mandis*, 119 N.J. Super. 59 (App. Div. 1972), certification denied 61 N.J. 156 (1972). Thus, legal fees are not compensable.

IV.

The New Jersey Supreme Court did not err in declining to make an award for interest on relocation assistance.

The denial of interest is not a Federal question. Rather, it is a matter of State practice and subject to the judicial determination of the State upon the facts presented. The New Jersey Supreme Court indicated that interest is not provided for by either State or Federal regulations. The Eminent Domain Act of New Jersey grants interest for condemnation awards in N.J.S.A. 20:3-31 (Appendix A-12A). That act does not apply to relocation expenses, but merely to the value of the condemned property. No provision for interest is contained in the Relocation Assistance Act, N.J.S.A. 20:4 et seq.

Interest was not fairly encompassed within the consent order and supplemental agreement. There is no statutory State provision granting interest for relocation expenses. There is no federal question involved.

CONCLUSION

For the reasons set forth herein, it is respectfully urged that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

HENRY RAMER
 Corporation Counsel
 Law Department—City Hall
 Market Street
 Paterson, New Jersey 07505

Attorney for Respondent

APPENDIX M

N.J.A.C. 5:11-10.9

Physical changes at new location . . .

3. Changes in or to a building or structure may not increase the value of the building or structure for general purpose uses, may not increase the structural or mechanical capacity of the building or of its components beyond the requirements of specific types of equipment moved from the old location or replaced with a substitute, nor include building or structural alterations required by local building codes and ordinances, except if required for the installation of specific types of equipment moved from the old location or necessary for the continuation of the business. No relocation payment in connection with a change in or to a building or structure shall be made for any items for which compensation was made as an acquisition cost at the old location.

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